



HONG KONG MONETARY AUTHORITY
香港金融管理局

Our Ref: B1/15C
G16/1C

20 December 2012

The Chief Executive
All Authorized Institutions

Dear Sir/ Madam,

Applicability of Enhanced Measures to Sale of Investment Products to Corporate Customers

The Hong Kong Monetary Authority (HKMA) has been in discussions with the banking industry on the applicability of the enhanced measures that are set out in the HKMA's circular of 25 March 2009¹ to corporate banking business with the aim of according an appropriate degree of protection to corporate customers. This circular sets out the HKMA's expected standards.

In dealing with "large/ sophisticated" corporate customers (defined below), authorized institutions which operate as corporate banks or have dedicated corporate banking units (collectively "corporate banks") are exempted from adopting the enhanced measures. For other corporate customers, corporate banks should adopt the version of the enhanced measures applicable to private banking customers as set out in the HKMA's circular of 20 January 2012².

For the purpose of this circular, a corporate customer may be classified as "large/ sophisticated" corporate customer if it is a:

- (i) company listed on any stock exchange;
- (ii) corporate entity, public body, tertiary institution, registered charitable organization or other legal entity having a dedicated/ specialised investment function;
- (iii) trust;
- (iv) person falling under any of the paragraphs (a) to (i) of the definition of "professional investor" in Part 1 of Schedule 1 to the Securities and Futures Ordinance;
- (v) professional partnership in a designated field³; or
- (vi) group entity (including holding company, subsidiary and associated company) of any of (i) to (v) above.

¹ "Implementation of recommendations in the HKMA's Report on Issues Concerning the Distribution of Structured Products Connected to Lehman Brothers"

² "Applicability of Enhanced Measures to Sales of Investment Products to Private Banking Customers"

³ Designated fields refer to law, accounting, taxation, actuary and finance.

Corporate banks should exercise proper supervision and have controls in place to prevent abuse of this exemption, especially in their dealings with partnerships. For example, while professional partnerships in designated fields are exempted from the enhanced measures, individual partners are not. Also, personal investments of individual partners should not be commingled with investments of the partnership.

Hedging transactions for corporate customers

Corporate banks are exempted from applying the enhanced measures to hedging transactions of corporate customers generally. However, where there is over hedging (e.g. investment amount is materially more than the risk exposure intended to be hedged, or investment tenor is longer than the time period of the risk exposure to be hedged), such transactions are not exempted. Further, whenever a corporate bank becomes aware of changes in a customer's circumstances such that a transaction no longer serves a hedging purpose (e.g. the risk exposure to be hedged no longer exists) and becomes an investment, the corporate bank should, as soon as practicable, review the customer's position, draw to the customer's attention the fact that the customer has an exposure to the investment product, and take or recommend appropriate actions to address the situation.

The HKMA expects compliance with this circular no later than six months from today's date. Corporate banks are reminded that they should put in place adequate controls in respect of the sale of investment products to corporate customers to ensure compliance with applicable regulatory requirements, including those promulgated by the HKMA and the Securities and Futures Commission.

If you have any questions on this circular, please contact Ms Florence To at 2878-1582, or Ms Candy Tam at 2878-1292.

Yours faithfully,

Meena Datwani
Executive Director (Banking Conduct)

c.c. Securities and Futures Commission (Attn: Mr Stephen Po, Senior Director of
Intermediaries Supervision)